BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

R. J. BROOKS, Appellant, v. CITY OF ISSAQUAH and PICKERING PARK ASSOCIATES, Respondent.	SHB No. 89-1 ORDER AFFIRMING MOTION TO DISMISS

This matter came on before the Shorelines Hearings Board on February 17, 1989 at 1:30 p.m., on respondents' Motion to Dismiss the appeal. The City of Issaquah was represented by Wayne B. Tanaka of Ogden, Murphy & Wallace; Pickering Park Associates was represented by George A. Kresovich of Hillis, Clark, Martin & Peterson, P.S.; and R. J. Brooks was represented by Jean M. Mischell of Bricklin & Gendler.

Three motions were presented: respondents' Motion to Dismiss the appeal, a motion by Washington Environmental Council (WEC) to intervene for purposes of the motion, and a motion by appellant to strike the brief of Pickering Park Associates as untimely. The WEC was granted leave to participate on the motion as amicus curiae. The motion to strike the brief was denied. As to the Motion to Dismiss, we decide as follows:

I. FACTS

1. On July 6, 1988, Pickering applied for a substantial development permit for the filling and grading of wetlands near Issaquah Creek in the City of Issaquah. Publication of notice of the application was made in the Issaquah Press on July 13 and 20, 1988. The notice stated:

> Any person desiring to express his views or to be notified of the action taken on this application should notify the Department of Development Review, 130 E. Sunset Way, Issaquah, WA, in writing of his interest within thirty days of the final date of publication of this notice which is July 20, 1988.

In response to this notice, appellant Brooks wrote a letter, dated August 12, 1988, to the Issaquah Department of Development Review expressing reasons for his opposition to the application. He did not, in this letter, ask to be notified of the action taken.

2. On September 2, 1988, Mr. Brooks' attorney wrote a letter to the Issaquah Department of Development requesting generally "notification of any activity, including hearings or decisions on the Pickering/Seattle Corporate Park permit process." With the letter were enclosed five self-addressed stamped envelopes. These were included in conformance with instructions received in a phone call to the Department of Development seeking information on how to obtain notification.

3. One of the self-addressed stamped envelopes was returned to Brooks' attorney, advising of a Development Commission meeting on

October 5, 1988, at which the substantial development permit application was to be taken up. As a result, Brooks appeared at the meeting and expressed his opposition orally. He did not request notice of the City's decision on the permit.

4. On October 10, 1988, Brooks wrote a letter addressed to the City of Issaquah to the attention of an employee in the City Clerk's office. This letter asked for notification "of the actions of the City of Issaquah which would divert storm water into Lake Sammamish State Park."

The City Clerk's office is separate from the Department of Development Review and is housed in a different building.

5. On October 12, 1988, Pickering mailed a substantial development permit, dated October 7, 1988, to the Washington State Department of Ecology. The permit, authorizing Pickering's fill and grade project, was received for filing at the Department of Ecology on October 14, 1988. Notice of the issuance of the permit was not provided by the City to either Mr. Brooks or his attorney.

6. On December 21, 1988, Brooks telephoned the City and learned for the first time that the substantial development permit had been issued. On January 5, 1989, Brooks filed his request for review with the state Shorelines Hearings Board. On February 3, 1989, the Board received a certification from the Attorney General and Department of Ecology stating that the "requestor has valid reasons to seek review

pursuant to RCW 90.58.180(1)."

7. RCW 90.58.140(6) provides that for a substantial development permit the "date of filing" is the date of actual receipt of a permit ruling by the Department of Ecology. In this case, the "date of filing" is October 14, 1988. The Request for Review filed on January 5, 1989, was not filed with the Shorelines Hearings Board within 30 days of the date of filing.

II. CONCLUSIONS

1. Under RCW 90.58.180(1):

> Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 as now or hereafter amended may seek review from the shorelines hearings board by filing a request for the same within thirty days of the date of filing as defined in RCW 90.58.140(6) as now or hereafter amended. (Emphasis added.)

2. Because the request for review here was not filed within 30 days of the date of filing, the Board is without jurisdiction to proceed and the matter must be dismissed.

3. Appellant, in resisting the Motion to Dismiss, argues that under the circumstances the appeal should be considered to be timely. To reach such a result the Board would have to either enlarge the appeal period, move its date of commencement forward or apply the principle of estoppel against the City.

4. The Board's jurisdiction derives solely from Chapter 90.58 RCW, the Shoreline Management Act (SMA). A well-known and often-cited

axiom of black letter law is the proposition that administrative agencies are creatures of the legislature without inherent or common-law powers and may exercise only those powers conferred either expressly or by necessary implication. Human Rights Commission v. Cheney School District, 97 Wn.2d 118, 641 P.2d 163 (1982); State v. Munson, 23 Wn. App. 522, 597 P.2d 440 (1979).

The SMA expressly provides a 30 day appeal period from a defined point in time--the date of receipt of a permit by the Department of Ecology. The question, then, is whether the Shorelines Hearings Board has authority to extend that period or change that defined point in time "by necessary implication" under some circumstances.

5. RCW 90.58.140(4) addresses the matter of notice relating to permits issued under the SMA. That subsection requires publication of notice for two consecutive weeks and mailing, posting or other means of notification "deemed appropriate by local authorities." The subsection states:

> The notices shall include a statement that any person desiring to submit written comments concerning an application, or desiring to receive a copy of the final order concerning an application as expeditiously as possible after the issuance of the order, may submit the comments or requests for order to the local government within thirty days of the last date the notice is to be published ... . The local government shall forward, in a timely manner following the issuance of an order, a copy of the order to each person who submits a request for the order.

These notification requirements are stated separately from the appeal period language of RCW 90.58.180(1). The appeal period is unambiguously defined as commencing at a date certain. The SMA does not make the commencement of the appeal period in any way dependent on the compliance of local government with its notification duties.

Were we to conclude that the City had failed in its notification responsibilities, there is still nothing on the face of the statutory scheme which would support our changing the "date of filing" or extending the appeal period.

6. Our review of legislative history leads us to the same conclusion. In Hamma Hamma v. Shorelines Hearings Board, 85 Wn.2d 441, 536 P.2d 157 178 (1975), the Court sustained an administrative interpretation which resolved prior language in the SMA which at one point spoke of a 30-day appeal period and at another of a 45-day appeal period. The interpretation was necessary because of ambiguous and conflicting statutory language. The agency interpretation served to "fill the gaps" in the general statutory scheme.

Hama Hama focused legislative attention on the appeal provisions of the SMA, but following Hama Hama there remained uncertainty as to when the appeal period starts to run. RCW 90.58.180(1) then allowed any person aggrieved to request review within 30 days of receipt of the final order. This provision made it impossible for any permittee to know for sure that he could begin construction, because (as in the

instant case) persons who might feel aggrieved might not receive the final order until a considerable time after its issuance.

The legislative response was contained in Chapter 51, Laws of 1975-76 2nd Ex. Session. That enactment in the session following the Hama Hama decision was intended to resolve ambiguities and uncertainties regarding the timing of appeals. It amended the SMA as follows:

(a) Local governments were given the notification requirements discussed above.

(b) The term "date of filing" was inserted into the statute and defined as the date of actual receipt by the Department of Ecology of a permit ruling.

(c) Construction pursuant to a permit was prohibited until 30 days from the "date of filing."

(d) The date of receipt of the final order by a person aggrieved was eliminated as the date for commencing the appeal period. Instead, appeals were made subject to a 30 day period starting on the "date of filing."

The construction of the statute which appellant seeks would, in cases like the present one, in effect restore the old scheme where the appeal period began to run when the aggrieved person received the permit. This approach would bring back the very uncertainty which Chapter 51 was intended to remove.

7. In matters where a citizen wishes to appeal a project approval, the controversy is not only between the citizen and the government. There is a third party with interests at stake -- the project proponent or permittee. The SMA is unusual in providing statutorily for an automatic stay of all construction until the appeal period has run, or if an appeal is filed, until all review proceedings before the Shorelines Hearings Board are terminated. RCW 90.58.140(5).[1] Thus an appellant, without the necessity for posting a bond or doing more than making his objections known, can stop a project in its tracks for a considerable time solely as a procedural matter.

While continuing this built-in delay for development, the Legislature, we believe, attempted to provide permittees with a bright line for when the appeal period starts and closes. See generally, Deschenes v. King County, 83 Wn.2d 714, 521 P.2d 1181 (1974). Thus, viewing Chapter 51 as a whole, we conclude that it would be contrary to legislative intent to interpret the statute to make the commencement of the appeal period dependent on whether the local government complied with its notification duties.

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[1] If an appeal is made from the Shorelines Hearings Board to Superior Court, the proponent of a project approved at every prior level can begin to build only by securing a court order after convincing the judge that the construction "would not involve a significant irreversible damaging of the environment. RCW 90.58.140(5)(b).

8. At bottom, we see appellant's argument as a request to this Board to exercise equitable powers through an interpretive approach akin to estoppel. However, the case law is clear that jurisdiction of a statutorily created body cannot be created by estoppel. E.g. State ex rel Pioli v. Higher Education Personnel Board, 16 Wn. App. 642, 558 P.2d 1364 (1976); Rust v. Western Washington State College, 11 Wn. App. 410, 523 P.2d 204 (1974).

Further, even if equitable principles were applicable to our jurisdiction, we are convinced that it is for a court rather than for us to say so. See Chaussee v. Snohomish County Council, 38 Wn. App. 630, 689 P.2d 1084 (1984).

Finally we note that estoppel, if called for here, could preclude the City from asserting the untimeliness of the appeal. However, the doctrine could not very well be applied against the permittee. Appellant has not detrimentally relied on anything the permittee has done or not done.

ORDER

We hold that the Request for Review was untimely. The Motion to Dismiss is GRANTED.

Done this 28th day of March, 1989.

SHORELINES HEARINGS BOARD

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Presiding

Wick Dufford
WICK DUFFORD, Chairman

[See Dissenting Opinion]
JUDITH A. BENDOR, Member

Nancy Burnett
NANCY BURNETT, Member

Gordon C. Crandall
GORDON C. CRANDALL, Member

CONCURRING VIEWS

We concur in the dismissal of the case. We believe this is the legally proper result, reached for the legally appropriate reasons. However, we do not want the Board's action to send the wrong message to local governments concerning their notification obligations under the Shorelines Management Act.

We are aware that here there are technical arguments in justification of the City's failure to advise Mr. Brooks of its substantial development permit decision. He never explicitly asked for this particular permit; his lawyer's request did not identify him as the person interested; the lawyer's request came after the 30 day period specified in the published notice.

But these are not compelling arguments. Mr. Brooks was a plaintiff (represented by the same attorneys) in a suit against the City involving the same development, settled only months in advance of the filing of the application involved here. He registered his opposition to this very application both in writing and orally. The City knew enough to provide his attorney with notice of a hearing on this application.

Issaquah is not a large town. This is a major project. Mr. Brooks' interest, repeatedly reasserted, cannot have been unknown. Looking at the totality of circumstances it is hard to understand how the City could avoid being aware that Mr. Brooks would want a copy of this decision. We think the City had a duty to notify Mr. Brooks here

and that it failed to perform that duty.

Given this conclusion, it is troubling to be told by amicus curiae (Washington Environmental Council) that the instant failure represents a widespread problem as to the notification habits of local governments.

While we agree that this Board is without authority to use equity in aid of acquiring jurisdiction, we do not believe the Legislature intended to create notification rights without a remedy. We have no doubt of the power of a court of general jurisdiction to fashion an appropriate remedy when failure to notify causes harm within the zone of interests protected by the SMA.

DATED this 29th day of March, 1989.

Wick Dufford
WICK DUFFORD, Chairman

Gordon F Crandall
GORDON CRANDALL

BENDOR: DISSENTING OPINION

The Legislature required that the Shoreline Management Act "be liberally construed to give full effect to the objectives and purposes for which it was enacted." RCW 90.58.900; enacted 1971. The Act is to be read as a whole, with a careful view to its multiple purposes. No words are surplusage. The Legislature, in response to Hamma Hamma, revised the Act in 1976. (Chapter 51, Laws of 1975-76 2nd Ex. Session. See Attachment.) In so doing, it carefully balanced twin goals: the need to provide timely notice to allow meaningful citizen participation in the permit consideration, issuance, and appeal process, and the need for finality. My colleagues' narrow opinion improperly focuses on the latter goal only, unnecessarily wandering in the fields of equity. In so doing they damage the legislative intent. Moreover, the result is a dismissal, seriously harming appellant.

The Legislature determined that government had a mandatory duty to provide notice of its decision to a requesting party:

> Local government shall forward, in a timely manner following the issuance of an order, a copy of the order to each person who submits a request for such order. Section (4), Chapter 51, supra; RCW 90.58.140(4). (Emphasis added.)

The statute uses the word "shall."

> The word "shall" is unambiguous and presumptively creates an imperative obligation. Clark v. Horse Racing Commision, 106 Wn.2d 84, 91, 720 P.2d 831 (1986).

A different legislative interpretation would render this notice requirement meaningless. See, Singleton v. Frost, 108 Wn.2d 723, 729, 742 P.2d 1224 (1987). Local government's strict compliance is required, because failure to do so potentially jeopardizes a right -- the citizen's appeal. Therefore, until the local government performs its mandatory duty, the running of the appeal period is tolled. To rule otherwise thwarts the Act's basic goal which requires local government to provide timely notice to its citizenry.

Two members of the Board conclude that dismissal is unfair, and exhort a court of general jurisdiction to fashion an appropriate remedy to undo the harm done to "the zone of interests protected by the SMA." (Concurring Opinion) I share that optimism.

JUDITH A. BENDOR, Member

ATTACHMENT

Section 1 Section 3 chapter 5 Laws of 1965 as amended by section 1 chapter 74 Laws of 1969 ex sess and RCW 43 99 030 are each amended to read as follows

From time to time, but at least once each four years, the director of motor vehicles shall determine the amount or proportion of moneys paid to him as motor vehicle fuel tax which is tax on marine fuel The director shall make or authorize the making of studies surveys or investigations to assist him in making such determination and shall hold one or more public hearings on the findings of such studies surveys or investigations prior to making his determination The studies surveys, or investigations conducted pursuant to this section shall encompass a period of twelve consecutive months each time. The final determination by the director shall be implemented as of the first day of the calendar month, which date falls closest to the mid-point of the time period for which the study data were collected The director may delegate his duties and authority under this section to one or more persons of the department of motor vehicles if he finds such delegation necessary and proper to the efficient performance of these duties ((~~Except as provided in RCW 43 99 160;~~)) Costs of carrying out the provisions of this section shall be paid from the marine fuel tax refund account created in RCW 43 99 040, upon legislative appropriation.

NEW SECTION Sec 2. Section 9, chapter 5, Laws of 1965, section 2, chapter 140 Laws of 1971 ex sess and RCW 43 99 090 are each hereby repealed

NEW SECTION Sec 3 This 1976 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately

Passed the House February 17, 1976
Passed the Senate February 13, 1976
Approved by the Governor February 21, 1976
Filed in Office of Secretary of State February 21, 1976

CHAPTER 51

[Substitute House Bill No 676]

SHORELINES MANAGEMENT——DEVELOPMENT PERMITS——REVIEW AND APPEALS

AN ACT Relating to shoreline management amending section 14 chapter 286 Laws of 1971 ex sess as last amended by section 3, chapter 182, Laws of 1975 1st ex sess and RCW 90 58 140 and amending section 18 chapter 286 Laws of 1971 ex sess as last amended by section 4 chapter 182, Laws of 1975 1st ex sess and RCW 90.58 180

Be it enacted by the Legislature of the State of Washington

Section 1 Section 14, chapter 286 Laws of 1971 ex sess as last amended by section 3 chapter 182 Laws of 1975 1st ex sess and RCW 90 58 140 are each amended to read as follows

(1) No development shall be undertaken on the shorelines of the state except those which are consistent with the policy of this chapter and after adoption or approval as appropriate, the applicable guidelines regulations or master program

ATTACHMENT ATTACHMENT

(2) No substantial development shall be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter

A permit shall be granted

(a) From June 1, 1971 until such time as an applicable master program has become effective, only when the development proposed is consistent with (i) The policy of RCW 90 58 020, and (ii) after their adoption the guidelines and regulations of the department and (iii) so far as can be ascertained the master program being developed for the area((~~In the event the department is of the opinion that any permit granted under this subsection is inconsistent with the policy declared in RCW 90 58 020 or is otherwise not authorized by this section the department may appeal the issuance of such permit within thirty days to the hearings board upon written notice to the local government and the permittee~~))

(b) After adoption or approval as appropriate, by the department of an applicable master program only when the development proposed is consistent with the applicable master program and the ((~~policy of RCW 90 58 020~~)) provisions of chapter 90 58 RCW

(3) Local government shall establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section ((~~Any such system shall include a requirement that all applications and permits shall be subject to the same public notice procedures as provided for applications for waste disposal permits for new operations under RCW 90 48 170~~)) The administration of the system so established shall be performed exclusively by local government.

(4) Local government shall require notification of the public of all applications for permits governed by any permit system established pursuant to subsection (3) of this section by ensuring that

(a) A notice of such an application is published at least once a week on the same day of the week for two consecutive weeks in a legal newspaper of general circulation within the area in which the development is proposed and

(b) Additional notice of such an application is given by at least one of the following methods

(i) Mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the substantial development is proposed

(ii) Posting of the notice in a conspicuous manner on the property upon which the project is to be constructed or

(iii) Any other manner deemed appropriate by local authorities to accomplish the objectives of reasonable notice to adjacent landowners and the public

Such notices shall include a statement that any person desiring to submit written comments concerning an application or desiring to receive a copy of the final order concerning an application as expeditiously as possible after the issuance of the order may submit such comments or such requests for orders to the local government within thirty days of the last date the notice is to be published pursuant to subsection (a) of this subsection Local government shall forward in a timely manner following the issuance of an order a copy of the order to each person who submits a request for such order

If a hearing is to be held on an application notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at such hearing

(5) Such system shall include provisions to assure that construction pursuant to a permit will not begin or be authorized until ((~~forty-five~~)) thirty days from the date ((~~of final approval by the local government~~)) the final order was filed as provided in subsection (6) of this section or((~~, except in the case of any permit issued to the state of Washington department of highways, for the construction and modification of the SR 90 (I-90) bridges across Lake Washington,~~)) until all review proceedings are terminated if such proceedings were initiated within ((~~forty-five~~)) thirty days from the date of ((~~final approval by the local government~~)) filing as defined in subsection (6) of this section except as follows

(a) In the case of any permit issued to the state of Washington, department of highways for the construction and modification of the SR 90 (I-90) bridges across Lake Washington, such construction may begin after thirty days from the date of filing.

(b) If a permit is granted by the local government and (i) the granting of the permit is appealed to the shorelines hearings board within thirty days of the date of filing, (ii) the hearings board approves the granting of the permit by the local government or approves a portion of the substantial development for which the local government issued the permit, and (iii) an appeal for judicial review of the hearings board decision is filed pursuant to the provisions of chapter 34.04 RCW the permittee may request, within ten days of the filing of the appeal with the court a hearing before the court to determine whether construction may begin pursuant to the permit approved by the hearings board or to a revised permit issued pursuant to the order of the hearings board If at the conclusion of the hearing the court finds that construction pursuant to such a permit would not involve a significant, irreversible damaging of the environment, the court may allow the permittee to begin such construction pursuant to the approved or revised permit as the court deems appropriate The court may require the permittee to post bonds in the name of the local government that issued the permit, sufficient to remove the substantial development or to restore the environment if the permit is ultimately disapproved by the courts, or to alter the substantial development if such alteration is ultimately ordered by the courts PROVIDED That construction pursuant to a permit revised at the direction of the hearings board may begin only on that portion of the substantial development for which the local government had originally issued the permit and construction pursuant to such a revised permit on other portions of the substantial development may not begin until after all review proceedings are terminated In such a hearing before the court the burden of proving whether such construction may involve significant irreversible damage to the environment and demonstrating whether such construction would or would not be appropriate shall be on the appellant

(c) If a permit is granted by the local government and the granting of the permit is appealed directly to the superior court for judicial review pursuant to the proviso in RCW 90.58.180(1) as now or hereafter amended the permittee may request the court to remand the appeal to the shorelines hearings board in which case the appeal shall be so remanded and construction pursuant to such a permit

shall be governed by the provisions of subsection (b) of this subsection or may otherwise begin after review proceedings before the hearings board are terminated if judicial review is not thereafter requested pursuant to the provisions of chapter 34 04 RCW

If a permittee begins construction pursuant to subsections (a) (b) or (c) of this subsection such construction shall begin at the permittee's own risk If as a result of judicial review the courts order the removal of any portion of the construction or the restoration of any portion of the environment involved or require the alteration of any portion of a substantial development constructed pursuant to a permit the permittee shall be barred from recovering damages or costs involved in adhering to such requirements from the local government that granted the permit the hearings board or any appellant or intervener

(((~~5~~))) (6) Any ruling on an application for a permit under authority of this section, whether it be an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with the department and the attorney general "Date of filing" as used herein shall mean the date of actual receipt by the department The department shall notify in writing the local government and the applicant of the date of filing

(((~~6~~))) (7) Applicants for permits under this section shall have the burden of proving that a proposed substantial development is consistent with the criteria which must be met before a permit is granted In any review of the granting or denial of an application for a permit as provided in RCW 90 58 180 (1) and (2) as now or hereafter amended the person requesting the review shall have the burden of proof

(((~~7~~))) (8) Any permit may after a hearing with adequate notice to the permittee and the public be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit In the event the department is of the opinion that such noncompliance exists the department ((~~may appeal within thirty days to the hearings board for a rescission of such permit upon~~)) shall provide written notice to the local government and the permittee If the department is of the opinion that such noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescission of such permit upon written notice of such petition to the local government and the permittee PROVIDED That the request by the department is made to the hearings board within fifteen days of the termination of the thirty day notice to the local government

(((~~8~~))) (9) The holder of a certification from the governor pursuant to chapter 80 50 RCW shall not be required to obtain a permit under this section

(((~~9~~))) (10) No permit shall be required for any development on shorelines of the state included within a preliminary or final plat approved by the applicable state agency or local government prior to April 1 1971 if

(a) The final plat was approved after April 13, 1961 or the preliminary plat was approved after April 30 1969((:)), or

(b) (i) Sales of lots to purchasers with reference to the plat or substantial development incident to platting or required by the plat occurred prior to April 1 1971 and

((~~(c)~~)) (ii) The development to be made without a permit meets all requirements of the applicable state agency or local government, other than requirements imposed pursuant to this chapter, and

((~~(d)~~)) (iii) The development does not involve construction of buildings or involves construction on wetlands of buildings to serve only as community social or recreational facilities for the use of owners of platted lots and the buildings do not exceed a height of thirty-five feet above average grade level and

((~~(e)~~)) (iv) The development is completed within two years after the effective date of this chapter

((~~(10)~~)) (11) The applicable state agency or local government is authorized to approve a final plat with respect to shorelines of the state included within a preliminary plat approved after April 30 1969, and prior to April 1 1971 PROVIDED That any substantial development within the platted shorelines of the state is authorized by a permit granted pursuant to this section, or does not require a permit as provided in subsection ((~~(9)~~)) (10) of this section, or does not require a permit because of substantial development occurred prior to June 1 1971

((~~(11)~~)) (12) Any permit for a variance or a conditional use by local government under approved master programs must be submitted to the department for its approval or disapproval

Sec 2. Section 18, chapter 286, Laws of 1971 ex sess as last amended by section 4, chapter 182 Laws of 1975 1st ex sess and RCW 90 58 180 are each amended to read as follows

(1) Any person aggrieved by the granting ((~~or~~)), denying or rescinding of a permit on shorelines of the state((~~, or rescinding a permit~~)) pursuant to RCW 90-.58 140 as now or hereafter amended may seek review from the shorelines hearings board by filing a request for the same within thirty days of ((~~receipt of the final order~~)) the date of filing as defined in RCW 90 58 140(6) as now or hereafter amended

Concurrently with the filing of any request for review with the board as provided in this section pertaining to a final order of a local government, the requestor shall file a copy of his request with the department and the attorney general If it appears to the department or the attorney general that the requestor has valid reasons to seek review, either the department or the attorney general may certify the request within thirty days after its receipt to the shorelines hearings board following which the board shall then but not otherwise, review the matter covered by the requestor PROVIDED That the failure to obtain such certification shall not preclude the requestor from obtaining a review in the superior court under any right to review otherwise available to the requestor The department and the attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with at any time within ((~~forty-five~~)) fifteen days from the date of the ((~~filing of said copies by the requestor~~)) receipt by the department or the attorney general of a copy of the request for review filed pursuant to this section The shorelines hearings board shall initially schedule review proceedings on such requests for review without regard as to whether such requests have or have not been certified or as to whether the period for the department or the attorney general to intervene has or has not expired unless such review is to begin within thirty days of such scheduling If at the end of the thirty

day period for certification neither the department nor the attorney general has certified a request for review the hearings board shall remove the request from its review schedule

(2) The department or the attorney general may obtain review of any final order granting a permit or granting or denying an application for a permit issued by a local government by filing a written request with the shorelines ((~~appeals~~)) hearings board and the appropriate local government within ((~~forty-five~~)) thirty days from the date the final order was filed as provided in ((~~subsection (5) of~~)) RCW 90.58.140(6) as now or hereafter amended

(3) The review proceedings authorized in subsections (1) and (2) of this section are subject to the provisions of chapter 34.04 RCW pertaining to procedures in contested cases. Judicial review of such proceedings of the shorelines hearings board may be had as provided in chapter 34.04 RCW.

(4) Local government may appeal to the shorelines hearings board any rules, regulations, guidelines, designations, or master programs for shorelines of the state adopted or approved by the department within thirty days of the date of the adoption or approval. The board shall make a final decision within sixty days following the hearing held thereon.

(a) In an appeal relating to a master program for shorelines, the board after full consideration of the positions of the local government and the department shall determine the validity of the master program. If the board determines that said program

(i) Is clearly erroneous in light of the policy of this chapter; or

(ii) Constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or

(iii) Is arbitrary and capricious; or

(iv) Was developed without fully considering and evaluating all proposed master programs submitted to the department by the local government; or

(v) Was not adopted in accordance with required procedures

the board shall enter a final decision declaring the program invalid, remanding the master program to the department with a statement of the reasons in support of the determination and directing the department to adopt after a thorough consultation with the affected local government, a new master program. Unless the board makes one or more of the determinations as hereinbefore provided, the board shall find the master program to be valid and enter a final decision to that effect.

(b) In an appeal relating to a master program for shorelines of state-wide significance the board shall approve the master program adopted by the department unless a local government shall by clear and convincing evidence and argument persuade the board that the master program approved by the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(c) In an appeal relating to rules, regulations, guidelines, master programs of state-wide significance, and designations, the standard of review provided in RCW 34.04.070 shall apply.

(5) Rules, regulations, designations, master programs, and guidelines shall be subject to review in superior court, if authorized pursuant to RCW 34.04.070: PROVIDED, That no review shall be granted by a superior court on petition

from a local government unless the local government shall first have obtained review under subsection (4) of this section and the petition for court review is filed within three months after the date of final decision by the shorelines hearings board

Passed the House January 30 1976
Passed the Senate February 13 1976
Approved by the Governor February 21 1976
Filed in Office of Secretary of State February 21, 1976

CHAPTER 52

[House Bill No 1237]

PUBLIC ASSISTANCE——ALTERNATE LIVING ARRANGEMENTS——LICENSING

AN ACT Relating to old age assistance, amending section 11, chapter 172, Laws of 1969 ex sess and RCW 74 08 044

Be it enacted by the Legislature of the State of Washington

Section 1. Section 11, chapter 172, Laws of 1969 ex sess and RCW 74 08 044 are each amended to read as follows.

The department is authorized to promulgate rules and regulations establishing eligibility for alternate living arrangements, and license the same including minimum standards of care, based upon need for personal care and supervision beyond the level of board and room only, but less than the level of care required in a hospital or a skilled nursing home as defined in the federal social security act

Passed the House January 20 1976
Passed the Senate February 13, 1976
Approved by the Governor February 21, 1976
Filed in Office of Secretary of State February 21, 1976

CHAPTER 53

[House Bill No 1291]

SCHOOL BUSES——LENGTH OPERATION LIMITATIONS

AN ACT Relating to motor vehicles and amending section 46 44 030 chapter 12 Laws of 1961 as last amended by section 2, chapter 76, Laws of 1974 ex sess and RCW 46 44 030

Be it enacted by the Legislature of the State of Washington

Section 1 Section 46 44 030 chapter 12 Laws of 1961 as last amended by section 2, chapter 76, Laws of 1974 ex sess and RCW 46 44 030 are each amended to read as follows

It is unlawful for any person to operate upon the public highways of this state any vehicle other than a municipal transit vehicle having an overall length, with or without load, in excess of thirty-five feet((~~, except~~)) PROVIDED That an auto stage or school bus shall not exceed an overall length inclusive of front and rear bumpers, of forty feet((~~, but~~)) PROVIDED FURTHER That any such school